

<b>STATE OF MICHIGAN</b> JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	<b>ORDER TO TAKE CHILD(REN) INTO          PROTECTIVE CUSTODY          (CHILD PROTECTIVE PROCEEDINGS), PAGE 1</b>	<b>CASE NO.          PETITION NO.</b>
Court address		Court telephone no.

1. In the matter of

name(s), alias(es), DOB

(see reverse side for other identifying information)

**A**

2. Date of entry of order: \_\_\_\_\_ Judge/Referee: \_\_\_\_\_ Bar no.

Upon presentation of proofs as required by the court, **IT APPEARS:****B**3. There are reasonable grounds for this court to remove the child(ren) from the parent(s), guardian, or legal custodian in compliance with MCL 712A.2(b) and MCR 3.963(B) because conditions or surroundings of the child(ren) are such as to endanger the health, safety, or welfare of the child(ren), and it is **contrary to the welfare** of the child(ren) to remain in the home because:**C**

4. ☐ a. Reasonable efforts to prevent removal of the child(ren) from the home were not made.
- ☐ b. Reasonable efforts were made to prevent removal of the child(ren) from the home. Those efforts include: (specify)

**D**

- ☐ 5. a. Reasonable efforts are not required to prevent the child(ren)'s removal from the home due to
- ☐ the ☐ mother's ☐ father's \_\_\_\_\_ subjecting the child(ren) to the aggravated circumstance(s) of \_\_\_\_\_ as provided in section MCL 722.638(1) and (2), and as evidenced by \_\_\_\_\_.

- ☐ the ☐ mother's ☐ father's conviction for murder of another child of the parent.
- ☐ the ☐ mother's ☐ father's conviction for voluntary manslaughter of another child of the parent.
- ☐ the ☐ mother's ☐ father's conviction for aiding or abetting in the murder or manslaughter of another child of the parent, attempting to murder the child(ren) or another child of the parent, or conspiring or soliciting to commit the murder of the child(ren) or another child of the parent.
- ☐ the ☐ mother's ☐ father's conviction for felony assault that resulted in serious bodily injury to the child(ren) or another child of the parent.
- ☐ the ☐ mother's ☐ father's involuntary termination of parental rights to a sibling of the child(ren).

- b. Reasonable efforts to preserve and reunify the family to make it possible for the child(ren) to safely return home are
- ☐ not required because the parent subjected the child or another child of the parent to one of the circumstances stated above.
- OR**
- ☐ still recommended because:

(when item 5 is checked, schedule a permanency planning hearing within 30 days of this determination)

(SEE SECOND PAGE)

Do not write below this line - For court use only

<b>STATE OF MICHIGAN</b> JUDICIAL CIRCUIT - FAMILY DIVISION COUNTY	<b>ORDER TO TAKE CHILD(REN) INTO          PROTECTIVE CUSTODY          (CHILD PROTECTIVE PROCEEDINGS), PAGE 2</b>	<b>CASE NO.          PETITION NO.</b>
Court address		Court telephone no.

In the matter of

**IT IS ORDERED:**

**TO ANY PEACE OFFICER:** \_\_\_\_\_

6. The child(ren) shall be taken into protective custody and

- ☐ a. placed with the Department of Human Services for care and supervision.
- ☐ b. placed at \_\_\_\_\_ for medical observation and treatment until medically released to \_\_\_\_\_ for placement at \_\_\_\_\_.

7. To effect this order you are authorized to enter the premises located at \_\_\_\_\_.

8. The parent(s), guardian(s), or legal custodian(s) of the child(ren) shall be directed to appear for a preliminary hearing in this matter to be held on \_\_\_\_\_ at \_\_\_\_\_.

9. This authorization to enter the premises and take the child(ren) into protective custody expires \_\_\_\_\_.

☐ Enter on LEIN

\_\_\_\_\_  
 Judge

**NOTE** to parent, guardian, or legal custodian: If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

**MCL 722.638 - AGGRAVATED CIRCUMSTANCES**

- (1) The Department shall submit a petition for authorization by the court under Section 2(b) of Chapter XIIA of 1939 PA 288, MCL 712A.2, if one or more of the following apply:
- (a) The Department determines that a parent, guardian, or legal custodian, or a person who is 18 years of age or older and who resides for any length of time in the child's home, has abused the child or a sibling of the child and the abuse included one or more of the following:
    - (i) Abandonment of a young child.
    - (ii) Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
    - (iii) Battering, torture, or other severe physical abuse.
    - (iv) Loss or serious impairment of an organ or limb.
    - (v) Life threatening injury.
    - (vi) Murder or attempted murder.
  - (b) The Department determines that there is risk of harm to the child and either of the following is true:
    - (i) The parent's rights to another child were terminated as a result of proceedings under Section 2(b) of Chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.
    - (ii) The parent's rights to another child were voluntarily terminated following the initiation of proceedings under Section 2(b) of Chapter XIIA of 1939 PA 288, MCL 712A.2, or a similar law of another state.
- (2) In a petition submitted as required by subsection (1), if a parent is a suspected perpetrator or is suspected of placing the child at an unreasonable risk of harm due to the parent's failure to take reasonable steps to intervene to eliminate that risk, the Department of Human Services shall include a request for termination of parental rights at the initial dispositional hearing as authorized under Section 19b of Chapter XIIA of 1939 PA 288, MCL 712A.19b.

IDENTIFYING INFORMATION							
Name	Race	Sex	Height	Weight	Hair color	Eye color	Date of birth
Name	Race	Sex	Height	Weight	Hair color	Eye color	Date of birth
Name	Race	Sex	Height	Weight	Hair color	Eye color	Date of birth
Name	Race	Sex	Height	Weight	Hair color	Eye color	Date of birth
Home address			City	State	Zip	Telephone number	
Father's name		Address		City	State	Zip	Telephone number
Mother's name		Address		City	State	Zip	Telephone number
Pickup radius <input type="checkbox"/> Statewide <input type="checkbox"/> Other:				Court ORI MI			
Reason for pickup is stated in item 3 on the other side of this order.							

OFFICER'S CUSTODY STATEMENT AND RECORD OF NOTIFICATION

1. I certify and return that I have taken

Child(ren)'s name(s)

into custody on

Date

at

Time

and have delivered the child(ren) to

Place of temporary placement

.
2. I
☐ notified
☐ attempted to notify the parent(s), guardian, or legal custodian listed below that the child(ren) has/have been taken into protective custody and that a preliminary hearing will be held on

Date and time

at

Place

.

NAME	METHODS USED (reasons for failure to notify must be noted)	DATE	TIME
Father			
Mother			
Guardian/Legal custodian			
Other			

I declare that this custody statement has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Date

Signature

Agency name

## Instructions for Using JC 05b

This is a new form designed to be used only in child protective proceedings, and replaces JC 05. JC05a is a new form to be used in cases where the court determines it should take temporary custody of a minor in delinquency matters (including probation violation hearings) and personal protection petitions.

Some of the key changes in the new JC05b include:

- A** 2. (Following paragraph 2): “**Upon presentment of proofs as required by the court**” replaces language in JC05 that requires a petition be filed before a court orders removal of a child. The new language allows for removal without a petition having first been filed. Keep in mind, however, that the evidence providing the court with authority to take jurisdiction and remove the child cannot be by affidavit or nunc pro tunc orders. 45 CFR 1356.21(d)(2).

- B** 3. This language comes from the federal regulations, which require the “contrary to the welfare” determination be made in the first court ruling that sanctions the removal of a child from the home. 45 CFR 1356.21(c). The language is highlighted not only to remind jurists that this is a key finding of the form, but also to make it easier for auditors to identify required provisions during subsequent audits.

Following this paragraph, as well as paragraph 4, you will notice a large white space. These areas are designed for the referee or judge to list the specific facts of the case that led him or her to make the “contrary to the welfare” and “reasonable efforts” determinations. During discussion of these forms, we considered many ways to make them more user-friendly, including adding drop-down menus for automated systems, checklists, areas to fill in the blanks, and other devices to save court staff time. However, 45 CFR 1356.21(d) requires judicial determinations regarding “contrary to the welfare,” “reasonable efforts to prevent removal,” and “reasonable efforts to finalize a permanency planning hearing” be *explicitly documented* and be made on a *case-by-case basis* and so stated in the court order. We realize the space provided may be inadequate in some situations; if necessary, you may always add supplemental pages.

- C** 4. Paragraph 4 allows the judge or referee to make a finding that reasonable efforts were made to prevent removal of the child or reasonable efforts were not required to prevent removal because the matter involves aggravated circumstances. This language is based on 45 CFR 1356.21(b)(1)(i), which requires a judicial finding that, within 60 days of removal of the child from the child’s home, there must be a judicial determination that reasonable efforts to prevent the removal were made or that reasonable efforts to prevent the removal were not required. Although the federal rules allow for 60 days to make this determination after removal, HHS has determined that funding under Title IV-E will not begin until both the “contrary to the welfare” and “reasonable efforts to prevent removal” findings are made. Because these findings affect potential funding, the committee decided they should be included in orders entered at the earliest time. *The ideal scenario is to make both findings at this stage of the proceedings; however, if you don’t have enough information to do so, the reasonable efforts finding can be made later.* Keep in mind, however, that to be eligible for Title IV-E funding, both findings must be made within 60 days of removal. Further, under the current interpretation, funding will not commence until both findings have been made.

## Instructions for Using JC 05b (continued)

- D** 5. 45 CFR 1356.71(d)(1)(iii) requires that “responsibility for placement and care [be] vested with the state agency.” Failing to clearly identify that the state agency has “care and placement” was one area of failure during Michigan’s initial federal audit. New language in this paragraph clarifies that the children removed from the home are placed with DHS for care and supervision pending the preliminary hearing.

In revising this form, there was lively discussion about the process for removing children from their home when courts are closed, and under what, if any, conditions someone other than a judge may approve a child’s removal from home. For purposes of whether a referee or other authorized individual is entitled to preside over hearings at which key Title IV-E findings are made, the federal regulations do not define what “judicial determination” means. However, keep in mind that state law generally prohibits referees from entering orders.